IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No.16272 of 2004
Date of decision: October 15,2007

Karnail Singh V. State of Punjab and others

CORAM: HON'BLE MR.JUSTICE J.S. KHEHAR
HON'BLE MR.JUSTICE SHAM SUNDER

Present: Shri Mehar Singh, Advocate, for the petitioner.
Shri NDS Mann, Additional Advocate General,
Punjab for respondents No.1 to 3.

J.S.Khehar,J.(Oral)

The petitioner was employed in the police department of the State Government. Having rendered service with the aforestated department, he retired on attaining the age of superannuation on 30.9.2000. Before his retirement, First Information Report No.35 dated 9.5.1997 was registered against the petitioner under the provisions of Sections 7 and 13(2) of the Prevention of Corruption Act,1988 and under section 342 of the Indian Penal Code at Police Station Raikot. Consequent upon the trial conducted against the petitioner, in furtherance of the aforestated First Information Report, the petitioner was convicted by the Special Judge, Ludhiana vide his judgment/order dated 14.1.2004 under the provisions of Prevention of Corruption Act as well as of the Indian Penal Code referred to above. The petitioner was, accordingly, sentenced to undergo rigorous imprisonment for a period of one year under section 13(2) of the Prevention of Corruption Act and rigorous imprisonment for a period of six months under section 342 of the Indian Penal Code. The aforestated sentences were to run concurrently.

Consequent upon the conviction of the petitioner, the respondents passed an order dated 26.8.2004 (Annexure P/5) whereby in exercise of the power vested in the respondent under Rule 2.2(A) and Rule 2.2(C) of the Punjab Civil Service Rules, the Inspector General of Police stopped the payment of provisional pension to the petitioner with effect from the date of his conviction i.e. with effect from 14.1.2004.

The petitioner preferred an appeal against the judgment/order dated 14.1.2004 passed by the Special Judge, Ludhiana before this court. On 5.2.2004, having entertained Criminal Appeal No.229-SB of 2004 filed by the petitioner,this court granted interim bail to the petitioner. The order passed by this court on 5.2.2004 is being extracted herein for ready reference:

> " Admit.
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> Interim bail granted to the appellants by the Court below is extended till further orders on the same terms and conditions as were imposed by the trial court."

It would be pertinent to mention that the Special Judge , Ludhiana by his order dated 14.1.2004 had suspended the sentence inflicted on the petitioner. Accordingly, by order dated 5.2.2004, this court extended the aforesaid order dated 14.1.2004 passed by the Special Judge, Ludhiana. In sum and substance, during the pendency of the appeal filed by the petitioner against the order of his conviction dated 14.1.2004, the sentence inflicted on the petitioner stayed. However, there is no stay on the conviction of the petitioner.

In the circumstances, noticed hereinabove, learned counsel for the petitioner vehemently contends that the sentence

imposed upon the petitioner having been stayed by the appellate Court, the respondents could not have legitimately withheld the provisional pension payable to him. In this behalf, learned counsel for the petitioner has placed reliance on a decision rendered by the learned Single Judge of this court in State of Punjab and another V. Hari Chand 1992(1) Recent Services Judgments 553 and State of Kerala V. Mohanan rendered by a Division Bench of the Kerala High Court reported as 2000(3) RSJ 540. It is not possible for us to accept the decisions relied upon by the learned counsel for the petitioner especially in view of the judgment rendered by the Apex Court in Deputy Director of Collegiate Education (Administration), Madras V. S. Nagoor Meera AIR 1995 Supreme Court 1364.In the aforesaid judgment, the Apex Court observed as under :

> " The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under clause (a) of the second proviso to Article 311(2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under clause (a) of the second proviso to Article 311(2) once a government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the government servant-accused is acquitted on appeal or other proceeding, the order can always be revised and if the government servant is reinstated, he will been entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested, viz. to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a criminal court."

In view of the aforesaid judgment rendered by the Apex

Court, which is pointedly on the issue canvassed by the learned counsel for the petitioner, we are satisfied that the instant writ petition deserves to be dismissed.

Dismissed.

(J.S.Khehar)
Judge

October 15,2007
sks

(Sham Sunder)
Judge